

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 4061 OF 1990

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be  
allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the  
fair copy of the Order ?

4. Whether this case involves a substantial  
question of law as to the interpretation of  
the Constitution of India, 1950 of any Order  
made thereunder?

5. Whether it is to be circulated to the Civil  
Judge?

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RAJENDRASINH GIRVARASINH CHAUHAN  
VERSUS  
STATE OF GUJAAT  
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Appearance:

MR DM THAKKAR for the Petitioner  
MR PR JOSHI AGP for the Respondent No.1  
MS JYOTSNA PATEL for Respondent Nos. 2 & 3  
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CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 20/12/2000

C A V JUDGMENT

#. By this petition, under Article 226 of the Constitution of India, the petitioner seeks to question the legality and validity of the action of the respondents in depriving and denying the employment to the petitioner, a dependant and legal heir of deceased permanent employee worked under respondent No.3. The petitioner claims compassionate appointment as Karkoon on permanent basis under the respondent No.3.

#. Father of the petitioner expired on 24.1.83 while in service of the respondent No.3. The petitioner submitted an application dated 24.3.83 to the respondent No.3 and prayed therein to give him appointment as Karkoon on the compassionate ground.

#. The petitioner stated that he is graduate with Economics from Gujarat University and he is residing with his mother having no other means of livelihood. After presentation of this application, the petitioner repeatedly inquired from the respondent No.3 with regard to it. However, no satisfactory reply was forthcoming from the respondent No.3.

#. The petitioner submitted that first time after presentation of the application vide communication dated 16.6.86 the petitioner was called upon by the respondent to comply with the certain infirmities as mentioned therein. The petitioner immediately complied with all requirements by return of post as directed by the respondents under their communication dated 16.6.1986. The petitioner sent also certificate issued by the Gram Panchayat dated 9.4.1987 to the effect that he and his mother are residing separately at Ukhreli. He also supplied the income certificate issued by the Mamlatdar on 5.1.1987 to certify that the yearly income of the petitioner is not more than Rs.6,500/=.

#. The grievance of the petitioner is that despite of supplying all necessary information and documents to respondent No.3 and again they called upon the petitioner from time to time to supply one or the other information. The petitioner stated that in these facts the correspondence between the petitioner and the respondent No.3 went on for quite a long time.

#. The petitioner admitted that vide communication dated 30.5.88 the respondent No.3 informed to him that his application for the compassionate appointment was not accepted.

#. The petitioner urged that he again approached to the

respondent authorities and ultimately by last reminder dated Nil-12-1988 represented to the respondents that he has wrongly been denied and deprived of the appointment on compassionate ground. The petitioner was informed under the communication dated 30.8.89 from the respondent No.1 that his request for the appointment on the compassionate ground cannot be accepted as the income of the family of the deceased exceeded prescribed limit at the relevant time. Hence this petition.

#. None of the respondents has cared to file the reply to the Special Civil Application. In the matter where the petitioner is claiming the compassionate appointment the respondents have remained only a silent spectator. The respondents are duty bound or have obligation on receipt of the notice to file the reply to the Special Civil Application within reasonable time. It became more obligatory for the respondents to file reply to the Special Civil Application as handsome amount of the peoples money is set apart in the budget for defending the litigation filed by the citizens against the State and its officers. Regular permanent set up is also there in the form of the institution "Government Advocates' Office" and the Law Officers etc. are there. Those officers are appearing in the court but they have manifold difficulties to defend the petitions and provide effective assistance to the court for want of replies to the Special Civil Applications. If in a case reply to the Special Civil Application is not filed for which the Law Officer defending the Government cannot be blamed. It is the duty and the responsibility of the concerned officer of the State of Gujarat, an impersonal machinery to get prepare and file reply to the Special Civil Application in the court. The consequences of nonfiling of the reply to the Special Civil Application are very serious.

#. It is true Code of Civil Procedure is not applicable to the proceedings under Article 226 and 227 of the Constitution of India but it is broadly accepted law of pleadings that where opponents are not denying the facts stated in the pleadings the same are to be taken to have been admitted. I fail to see any justification in the action or omission deliberate or bonafide of the respondents, more particularly, respondent Nos. 2 and 3 not to file reply to the Special Civil Application. Not only this the learned counsel, who are appearing for the respondents are also unable to give any explanation good, bad or indifferent for this total noncooperative attitude of its officers of an impersonal Machinery in the litigations.

##. In the absence of the reply to the Special Civil Application the factual averments made therein by the petitioner stands uncontroverted and same are to be taken to have been admitted by them.

##. The learned counsel for the petitioner contended that the petitioner is the dependent of the deceased employee of the respondent No.3, who died while in service and the petitioner should have been given the appointment as karkoon on compassionate ground. It has next been contended that the petitioner immediately after death of his father submitted an application to the respondent No.3 for giving him the appointment on the post of karkoon on compassionate ground and whatever the information and documents desire from him by the respondent, the same have also been furnished but still the prayer has been rejected first time without giving any reason and second time on the ground, which is wholly untenable. Lastly it is contended that the income of the family of the deceased does not exceed the prescribed limit as laid down at the relevant time.

##. Shri P.R.Joshi, learned AGP for the respondent No.1 contended that the appointment on compassionate ground is not a matter of course or right. In his submission the Government has prescribed the income limit and where the income of the family of the deceased exceeds that limit the dependent cannot be given the employment on compassionate ground. In this case, Shri P.R.Joshi, learned AGP contended that the petitioner has not produced any material to show and establish that the income of the family on the date of the death of the employee was not exceeding the income limit as prescribed under the rules. Shri Joshi concluding his arguments contended that rightly the claim of the petitioner for compassionate appointment has not been accepted by the respondent No.1.

##. Ms.Jyotsna Patel, learned counsel for the respondent Nos. 2 and 3 though adopted the arguments advanced by Shri Joshi, learned AGP, in addition she contended that the petitioner has raised a claim for compassionate appointment which is otherwise not sustainable. In her submission, the petitioner has not disclosed all material facts to the court. The income of the other 3 brothers of the petitioner was not disclosed. The petitioner's other 3 brothers are to be taken to be in the gainful employment or settled in the business as neither of them has applied for this compassionate appointment. In case, in her submissions the elder brothers of the petitioner

would not have been in the gainful employment or settled in business, the application would have come for this appointment by the eldest brother. The story with which the petitioner come up that he and his mother are residing separately from brothers is difficult to accept more so when these documents produced in support of this plea are of the year 1987. The position has to be considered as on the date on which an employee died while in service.

#. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

##. The very basis of compassionate appointment is to see that the family gets immediate relief. The Apex Court has held in number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crises resulting due to death of bread earner who had left the family in penury and without any means of livelihood. In the case in hand, it is difficult to accept that on death of the father of the petitioner, the family was left in penury and without any means of livelihood. From the documents which have come on record, I find that the petitioner is the youngest son and other brothers elder to him are there. It is not the case of the petitioner that on the date of death of the father his elder brothers were not in gainful employment or settled in business. The father of the petitioner was expired on 24th January, 1983 and the very fact that his elder brothers have not applied for this compassionate appointment goes to show that they were already in gainful employment or settled in business. The petitioner has now come up with the case that his brothers are residing separately and for this a document has been produced at annexure 'E' at page No.24 which is of 9th April, 1987 i.e. after more than four years and about three months from the date of death of the father of the petitioner. This position at the most can be taken of the year 1987 and not of 1983. The position has to be considered and taken as on 1983 and it is difficult in the facts of this case to accept that because of death of father the family suffered financial crisis and it was left without any means of livelihood. In the family, the elder brothers of the petitioner were there. It is not the case of the petitioner that they were not in gainful employment or settled in business on the date of the death of employee. It is to be assumed, presumed and accepted in presence of these undisputed factual position that they were earning and it is not the case where application otherwise could have been entertained of the petitioner to give him the

compassionate appointment. The petitioner is taking compassionate appointment to be as a matter of right or course, which is not correct. These appointments are to be given to give immediate relief to the family. It is a case where, in the facts of this case, the family of the deceased was not in need of any immediate relief to be given to it by giving compassionate appointment to the petitioner.

##. This petition otherwise also deserves to be dismissed on the ground of delay. The petitioner applied for compassionate appointment in the year 1983 and he filed this petition in the year 1990 i.e. after seven years. Not only this, by communication dated 30th May, 1988, it has been informed to the petitioner that his application for giving him the compassionate appointment cannot be accepted. After that communication also, the petitioner filed this petition after about two years. In case the family of the petitioner would have fallen under sudden financial crisis and needed immediate relief, then he would have come up before this Court in the year 1983 itself. The very fact that the petitioner waited for all these years goes to show that he want to encash it as a right conferred upon him under Article 14 or 16 of Constitution or some other Article of the Constitution to get the appointment on compassionate ground. This is wholly a frivolous and misconceived approach and the petition.

##. In the result, this petition fails and the same is dismissed. Rule discharged.

##. The petitioner has made an attempt to abuse the process of the Court. It is a case where though there was sufficient means of livelihood of the family of the petitioner on the date of death of his father still this application has been moved and petitioner has gone to the extent of filing the petition, which clearly goes to show that he has made an attempt to abuse the process of the Court. It cannot be taken lightly. By such attempts, frivolous and misconceived petitions are coming up before this Court which results in wastage of judicial time of the Court. The Courts are already facing serious problem how to overcome the pendency of the cases and in case the litigants are unmindful of their duties which they owe to co-litigants, it goes on to file such frivolous and misconceived petitions, it is certainly to be put at par with the action of making an attempt to abuse the process of the Court. The Court cannot be a silent spectator or felt content and satisfied by dismissing the petition in such matters. The petitioner is directed to pay

Rs.1000/= as costs of this petition and it is to be deposited by him in the Chief Minister's Relief Fund and receipt of deposit thereof is to be produced on the record of this case.

(S.K.Keshote, J.)

\*Pvv/Zgs